

Assessment of the Investigative Objectivity in the Execution of Detention Authority Under the Principle of Unity of Command in the Indonesian Military Criminal Justice System

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Abstract

The Indonesian National Army (TNI), as the Armed Forces in the country, operates under specific regulations to enforce military law, primarily governed by Law Number 31 of 1997 concerning Military Justice. According to Article 1 of the law, the responsibility for conducting investigations falls to Military Police Investigators, alongside Military Prosecutors and Superiors who have the right to punish suspects. Therefore, this research aimed to analyze the authority of Military Police Investigators within the investigative process, with a specific focus on their power to detain suspects. Under the current provision, Military Police Investigators lacked the independent authority to detain, which might compromise the objectivity of investigations. A normative juridical method was adopted based on a literature review and secondary data. The results showed that Military Police Investigators did not have the authority to detain suspects without an order from a Superior who has the right to punish, as stipulated in Law Number 31 of 1997 concerning Military Justice. For the investigation to run more objectively, Military Police Investigators needed to be granted the authority to detain suspects independently, without requiring prior authorization from a superior.

Keywords: Superior Who Has the Right to Punish, Military Police Investigators, Detention, Military Justice, Principle of Unity of Command.

Introduction

Indonesia is a country that places a high priority on the role of law in its social, national, and civic life. Criminal law is one of the frameworks used to regulate individual behavior. According to E.Y. Kanter and S.R. Sianturi, criminal law is a series of provisions governing prohibited or required behavior. It includes criminal sanctions for violators and outlines the methods for investigation, prosecution, trial, and the execution of sentences. In short, criminal law defines punishable actions, specifies corresponding penalties, and details the legal process by which punishment is imposed.

Criminal law research inherently includes the examination of criminal acts as one of its primary subjects. Pompe argued that a criminal act or strafbaar feit was a violation of norms that disrupted the legal order, whether committed intentionally or unintentionally. Punishing such violations is necessary to maintain the legal order and protect the public interest. Therefore, a criminal act is any behavior considered punishable under legal provisions, suggesting the belief that offenses against codified norms require penalties to maintain order and safeguard the public interest.

The categorization of a criminal act appears not only in the Criminal Code but also in other laws. Therefore, criminal law is divided into general criminal law (*lex generalis*) and special criminal law (*lex specialis*). *Lex generalis* applies to every legal subject without distinguishing between personal qualities and is encapsulated in codifications such as the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP). Meanwhile, *lex specialis* is stipulated for special groups or particular offenses and is regulated in a special law outside the codification. Military criminal law, applicable exclusively to military personnel, serves as one example of *lex specialis*.

Military criminal law addresses offenses that can only be committed by military personnel and are generally outlined in the Military Criminal Code. The procedural framework for military justice is established under

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Law Number 31 of 1997 concerning Military Justice. As *lex specialis*, military criminal law contains provisions specifically made for the military and those associated with it, often deviating from the general rules of the Criminal Code and the Criminal Procedure Code.

As *lex specialis*, military criminal law overrides the general rules outlined in the Criminal Code and the Criminal Procedure Code. It remains an integral component of the national legal system and functions as a subsystem within the provisions governing state defense and security. Therefore, military criminal law must be based on the foundational principles of military duties and the basic principles of national law, ensuring that these duties are fulfilled accurately and responsibly.

The application of *lex specialis* within the military is not a "privilege" for military personnel. However, the legal standards and norms applicable to the personnel are strict, with severe sanctions intended to promote discipline. This strict framework serves as a control mechanism, ensuring that military personnel can behave and act in accordance with what is assigned and demanded of them. Despite being threatened with more severe sanctions, violations of criminal law among military personnel continue to occur. As a result, the enforcement of military criminal law remains crucial, serving as a repressive and preventive instrument.

The enforcement of criminal law relies significantly on the broader criminal justice system. According to Barda Nawawi Arief, the criminal justice system is essentially a structured mechanism designed to enforce criminal law, which is manifested or organized in four subsystems, including,

Investigative Power (by the Investigative Agency/Institution);

Prosecution power (by the public prosecutor's agency/institution);

The power to try and pass verdicts/criminal sentences (by the court);

The power to execute criminal decisions (by the executing agency/apparatus).

The four stages/subsystems of the Indonesian criminal justice system operate as a unified structure, often known as the integrated criminal justice system. This framework sequentially delegates enforcement powers to distinct institutions, including the police, prosecutor's office, judiciary, and correctional institutions.

Military criminal law follows a similar four subsystems but is implemented by specialized executing institutions. For instance, investigative authority is executed by the superior who has the right to punish, Military Police officials, and Auditors. The power of prosecution is executed by the Military Auditor or Oditurat, while the power to try and pass verdicts is carried out by the Military Court, which consists of the Military Court (Dilmil), the High Military Court (Dilmilti), the Main Military Court (Dilmiltama), and the Military Combat Court (PMP). Lastly, the power to execute criminal decisions is carried out by the Military Correctional Institution (Lemasmil).

In line with Article 1 Number 16 of Law Number 31 of 1997 concerning Military Justice, an investigation is defined as "a series of actions by the Investigators of the Armed Forces of Indonesia in accordance with legal procedures to collect evidence that sheds light on the crime and identifies the suspect." This provision indicates that the role of investigators is to collect evidence that sheds light on the crime and identifies the suspect.

Article 69 of Law Number 31 of 1997 identifies the individuals authorized to conduct investigations as the superior who have the right to punish, designated Military Police officials, and Military Auditors. Furthermore, Article 74 paragraph (1) of the same law states that certain Military Police officials and Military Auditors assist with investigative duties, thereby allowing the superiors who have the right to punish to focus on their main duties while ensuring the principle of command unity is maintained.

In military justice, the authority to investigate often includes the power to take coercive measures, one of which is detention, aimed at ensuring a smooth investigative process. According to Article 1(21) of Law

Number 31 of 1997 concerning Military Justice, detention is defined as "an act of depriving the freedom of a suspect in a military crime, carried out under the order of a superior who has the right to punish, the officer handling the case, or the chief judge or head of the military court." While Military Police Investigators and Prosecutors conduct investigations under this law, the authority to detain lies exclusively with the superior who has the right to punish. Additionally, detention can only be carried out after there is an order from such superior officers.

The authority to detain that is usually attached to investigators in the provisions seems to deviate slightly from the situation in the field. Although Military Police Investigators and Auditors handle field investigations, they both lack the authority to detain forcibly. Military Police Investigators who are the ones responsible for the investigation process, are only authorized to make arrests. After an arrest, these investigators and Military Auditors are required to immediately report to the superior who has the right to punish the suspect in order to obtain a detention decision letter.

This situation raises questions about the objectivity of detention decisions carried out on the orders from a superior, rather than by the investigators actively working on the case. Detention is one of the crucial stages that supports the smooth running of the investigation, but such a strategic authority only lies in the hands of the superior who has the right to punish. Therefore, this research aimed to assess the current condition of investigation within the Indonesian Military Court system and explore how investigation, specifically in exercising the authority of detention, should be carried out more objectively by Military Police Investigators.

Research Method

This research used a normative legal method, primarily using secondary data sources, including primary, secondary, and tertiary legal materials, supplemented by the primary data. The examined objects included legal principles, legal rules (contained in related laws and regulations), theories, and expert legal doctrines. Descriptive analysis would be applied to describe existing phenomena based on factual data and information to understand a deep and comprehensive view of the research object.

Discussion

Legal Review of the Investigation Process in Law Enforcement in Military Court Environments

Military criminal law generally included rules of action and behavior imposed by the state on individuals serving in the military to enforce and maintain discipline. The law is considered a *lex specialis* that specifically applied to military personnel or those assimilated to them. Additionally, military criminal law addressed offenses that could only be committed by military personnel. The legal basis was found in the Military Criminal Code (KUHPM), but the procedural law was regulated in Law Number 31 of 1997 concerning Military Justice.

The existence of a distinct criminal law for military personnel was due to the uniqueness and specialness of military institutions both in terms of role and position. Military institution, serving as the main instrument of national defense, was required to maintain high levels of readiness and discipline to effectively address challenges and threats to national security. According to Dini Dewi Heniarti, the crucial role of this institution (Armed Forces) has led to the development of military law as a separate or special branch of law.

Moch. Faisal Salam explained that while military personnel were Indonesian citizens not inherently separate from the general population, the unique responsibilities they carried as defenders of national security necessitated a distinct strategy. The demands of their obligations and the need for a disciplined culture set the standard for creating a specialized law and judicial institution tailored for military personnel.

In addition to distinct regulations, military personnel were subjected to trial in a special military court institution that was different from the general court. The rationale behind this separation included,

The military had an important and heavy task, particularly to protect, defend, and maintain the integration and sovereignty of the state, which might follow the process of war.

The need for special organization, maintenance, and education to facilitate the important and heavy tasks.

The use of weapons and gunpowder was permitted in carrying out military duties.

From the description above, the existence of special military courts was attributed to the significant responsibility and high level of discipline expected of military personnel. This responsibility was heightened by the permission to use weapons in the performance of duties, which made them different from civilians who were not subject to the same rigorous standards or specific behavioral requirements for the interests of a particular group.

Military criminal law included rules of action and behavior imposed by the state on individuals in military service to enforce and maintain high levels of discipline. The enforcement of the law applied to the legal subjects mentioned in Article 9 of Law Number 31 of 1997 concerning Military Justice, which consisted of,

“Soldiers

those considered to be soldiers by law;

members of a group or body who were considered to be soldiers by law;

someone who did not fall into the groups in letters a, b, and c but by decision of the Commander in Chief with the approval of the Minister of Justice should be tried by a Court within the military court environment.”

These provisions clarified that military criminal law applied not only to soldiers but also extended to individuals who were designated as soldiers or those considered subject to military jurisdiction by the decision of the Commander in Chief, with the approval of the Minister of Justice (currently the Minister of Law and Human Rights).

Before a criminal case reached military court, it would certainly pass through a series of stages starting with an investigation. The task of conducting an investigation was carried out by the superior who has the right to punish, certain Military Police Investigators, and Military Auditors. The specific authority of each of the authorized personnel could be outlined as follows.

Superiors Who Have the Right to Punish

Article 74 of Law Number 31 of 1997 concerning Military Justice outlined the authority of the superior who has the right to punish as follows.

conducting investigations against subordinates soldiers who were under their command authority, the implementation of which was carried out by investigators as referred to in Article 69 paragraph (1) letter b or c;

receiving reports on the implementation of investigations from investigators as referred to in Article 69 paragraph (1) letter b or c;

receiving case files resulting from investigations from investigators as referred to in Article 69 paragraph (1) letter b or c; and

detaining suspected subordinates who were under their command authority.

Military Police Investigators

Military Police was one of the subsystems in military criminal justice whose authority was the same as investigators in the general court. They received delegated authority from the Commander in Chief to conduct investigations about a criminal act committed by soldiers. Based on the provisions, the authority of Military Police Investigators was as follows.

Received reports or complaints from someone about an incident that was suspected of being a criminal act;

Take the first action at the time and the scene of the incident;

Seek information and evidence;

Order a suspect to stop and check their identification;

Make arrests, searches, confiscates, and examines documents;

Take fingerprints and photograph someone;

Summon someone to be heard and examined as a suspect or witness;

Requesting assistance from an expert or bringing in an expert as needed in connection with the examination of the case;

Carrying out other actions according to responsible law.

In Article 71 paragraph (2) of Law Number 31 of 1997 concerning Military Justice, Military Police Investigators need to perform the following duties in order to have the above authority.

Carrying out orders from the superior who has the right to punish in order to detain a suspect, and,

Reporting the results of the investigation to the superior officer.

Military Prosecutors

Military Prosecutors had the same authority as the prosecutor in general courts but with expanded responsibilities. In addition to the authority to prosecute, and execute decisions or court rulings in the military and general court environments, Military Prosecutors also possess investigative powers. When acting as investigators, their authority was delegated by the Commander in Chief to investigate criminal offenses committed by soldiers. The authority of Military Prosecutors was as follows :

conducting prosecutions in criminal cases where the defendant was a soldier with the rank of Captain or below, a member of a group/position/agency/equated or considered a soldier based on the law which included the rank of Captain or below, and a person who with the approval of the minister should be tried by a military court;

implementing the determination of a judge or court decision in the military court environment or general court;

conducting additional examinations; and

conducting investigations.

In the conventional justice system mechanism, there was a clear distinction between the investigation and inquiry phases. However, military court procedures under Law Number 31 of 1997 concerning Military

Justice did not use the term "inquiry," instead combining investigation and inquiry into a single stage. The reason for this unification was that investigation was seen as a function inherent in the commander, with Military Police Investigators responsible for conducting such tasks. Therefore, an investigation was defined as a series of actions by investigators, based on legally regulated procedures, aimed at collecting evidence that sheds light on the crime and identifying the suspect.

The investigation process in military criminal procedures consisted of several stages that began with the receiving of a report, complaint, or being caught red-handed or based on information directly obtained by investigators. In addition to the entry of the report, the first action was carried out at the scene of the incident. The next stage was the examination stage which included summoning the suspect and a minimum of two witnesses, followed by preparing an investigation report. At this examination stage, investigators might use coercive measures such as arrests, detention, searches, or confiscations to facilitate the investigation process. After all the stages were completed, it would proceed to the investigation administration stage.

Although the law listed several types of investigators including the superior who have the right to punish, Military Police Investigators, and Military Prosecutors, the investigative authority was carried out by Military Police Investigators or Prosecutors. The delegation occurred since the commander of a unit, who held critical and demanding leadership responsibilities, could not personally carry out investigations due to their extensive duties. Therefore, investigative authority was legally delegated to Military Police Investigators and Prosecutors. The arrangement allowed for effective investigation management while enabling the commander to focus on their primary duties and maintaining the principle of unity of command and commander accountability.

The role of the superior who has the right to punish held significant authority within the military criminal justice process, showcasing a strategic and dominant position. This dominance was apparent where preliminary examinations of a suspect required the permission or knowledge of the suspect's direct superior. However, there were exceptions to the provision, particularly when the suspect was caught red-handed committing a crime or immediately surrendered. The superior who has the right to punish could also maintain a stronger position in both the investigation and preliminary examination of a suspect, as they operated independently from the directives or oversights of Military Prosecutors. The procedure embodied the principle of unity of command and commander responsibility, shown by the authority of the superior to approve detention.

The extensive authority vested in the superior who has the right to punish exemplified the military's commitment to upholding the principle of unity of command and responsible commander. As an organization that prioritized discipline and compliance with the command hierarchy, the military expressed that each action, including investigation and detention, should be by the chain of command. Therefore, the superior who has the right to punish held direct responsibility for the personnel, granting them essential authority to take action against any criminal act.

Authority of the Military Police in Detention in the Investigation Process of TNI Soldiers Suspected of Committing Criminal Acts

Law enforcement in military institutions functioned as a command responsibility, integral to the command structure. Commanders at all levels were obliged to observe and supervise the quality and level of legal awareness and discipline of TNI soldiers under their authority. As the enforcers of command responsibilities, commanders needed to pay attention to subordinates by giving awards to those who achieved success in carrying out their duties and functions and providing sanctions for those who violated the rules. This process of rewards and sanctions was important to improve the performance and discipline of military personnel.

The imposition of sanctions for violations of military criminal provisions needed to pay attention to the principles and characteristics inherent to military life. The principles and characteristics affected the organization and functioning of military structures, ensuring that military operations or orders were carried

out quickly and inefficiently while maintaining the integrity of the Indonesian unity. The key principles governing the military organization included,

The principle of unity of command explained that in military structures, a commander occupied a central position and bore full responsibility for their unit and subordinates. Under this principle, the authority to investigate any criminal act fell under the superior who has the right to punish, in order to determine the fate of the subordinates in the settlement of criminal cases, even though the actual execution was delegated to Military Police Investigators or Auditors.

The principle of commanders being responsible for their subordinates governed the order of life and characteristics of the Armed Forces organizations. Commanders served not only as leaders but also as good teachers, fathers, and trainers for their subordinates. They should also be fully responsible for the unit and subordinates.

The principle of military interests should be prioritized over individual or group interests. The goal was to ensure that defense missions were carried out properly. However, in the context of law enforcement, these military interests needed to be balanced with legal considerations.

For instance, the application of the principle of unity of command and the commander being responsible was exemplified by granting investigative authority to the superior who has the right to punish, who was also the commander of the unit, thereby enabling them to determine the fate of their subordinates.

Although the superior who have the right to punish did not carry out the investigation directly, they retained the authority to carry out coercive measures, including the detention of the suspect. Military Police Investigators and Military Auditors lacked the authority to detain the suspect independently, making detention occur under the order of the superior.

In carrying out investigations, investigators were granted the authority to perform coercive measures, which was a privilege intended to facilitate and enhance the effectiveness of the investigative process. As the name implied, coercive measures were a form of lawful action taken against a suspect. In this case, Military Police Investigators did not have the authority to carry out detention but they might arrest a suspect. When these investigators made an arrest, they made a report to the superior who was then responsible for issuing a detention decision.

According to Article 1 paragraph (21) of Law Number 31 of 1997 concerning Military Justice, detention was defined as follows.

“Detention was the placement of a suspect or defendant in a certain place by the investigators of the Armed Forces of Indonesia on the orders of the superior who has the right to punish, the Case Referring Officer, or the Chief Judge or Head of the Court, in accordance with their decision or determination in the case and the procedures outlined in this Law.”

The provisions clarified that the authority to carry out detention was vested in the superior who has the right to punish, the Case Referring Officer, the Chief Judge, or the Head of the Court. Specifically, at the investigation level, the right to detain was held by the superior and the officer who handed over the case.

The deprivation of freedom of movement through detention was carried out based on the fear that the suspect might flee or pose a threat to community security. In addition, detention might be warranted when there was a risk that the suspect could not "damage or remove evidence or repeat the crime". Detention was only carried out when the suspect was strongly suspected of having committed a crime with sufficient initial evidence.

Sufficient initial evidence showed that there should be a minimum of two pieces of evidence consisting of a police report and additional evidence in the form of a witness examination report, a crime scene examination report, or an investigation report. The evidence served as a reason or condition to arrest an

individual suspected of having committed a crime. The goal was to ensure that the suspect would not flee, damage or remove evidence, or repeat the crime. Detention was permissible only when the suspect was accused of committing a crime that carried a potential prison sentence of three months or more.

Detention was carried out for the benefit of the investigation and was authorized through a decision letter issued by the superior who has the right to punish. The suspect would only be detained for a period of 20 days. When necessary, the Case Referring Officer might extend the detention by issuing a decision that allows for an additional 30 days, with a maximum of six extensions. The maximum detention period was 180 days, after which by law, the suspect should be released when 200 days have passed without resolution. Furthermore, the suspect could be released before the end of the detention period when the interests of the investigation have been fulfilled.

A detention decision letter or order specified the identity of the suspect, provided reasons for the detention, included a summary of the alleged crime, and identified the detention location. A copy of the order was given to the suspect's family, and detention was carried out in a military detention center or other place determined by the commander. At the request of the suspect, the superior who had the right to punish or the Case Referring Officer, acting on recommendations from the Military Police or Prosecutors, might suspend detention under specified requirements. However, the suspension could be revoked at any time when the suspect failed to meet the set requirements.

The requirement that the detention order came from the superior who has the right to punish showed the principles of unity of command and the commander being responsible. The hierarchy and command structure allowed the superior to maintain control and supervise subordinates while reinforcing disciplinary standards. Additionally, the superior who has the right to punish was better positioned to understand the field conditions and operational needs, ensuring that detention needed to pay attention to this aspect.

Granting the authority to detain to the superior who has the right to punish, rather than to Military Police Investigators, presented certain weaknesses. There were cases where the superior did not issue a detention order, allowing the suspect to escape or engage in activities that interfere with the interests of the case. It was essential to recognize that the considerations of the superior who has the right to punish were certainly not always infallible. Although expected to make objective decisions, the superior did not directly participate in the investigation process. This lack of direct engagement could lead to delays or omissions in detention decisions, particularly when the superior prioritized operational needs and unit circumstances, potentially at the cost of investigative security. The failure to detain might also occur as a result of a lack of information or coordination with Military Police Investigators handling the case.

The main concern regarding the authority of the superior over detention relied on maintaining objectivity. Objectivity could be compromised when the superior who has the right to punish was removed from the investigative process. In contrast, Military Police Investigators, who were directly engaged, were likely to have a more accurate understanding of case details, avoiding the need to rely on interpretations or secondhand reports.

The same meaning could be indicated when compared to the testimony of a direct witness and that of a *de auditu* witness. A direct witness who heard, saw, or experienced an event, provided testimony that held more credibility and completeness than a *de auditu* witness, whose account was based on secondhand knowledge. Similarly, Military Police Investigators who carried out the investigation would have a clearer and more detailed view of its progress and needs compared to the superior who was not directly engaged in the investigation.

In addition to being more knowledgeable about the course of the case, Military Police Investigators had direct access to evidence, witnesses, and relevant facts, allowing for a more accurate assessment regarding the need for suspect detention. The investigators' knowledge of the crime being investigated was likely to be deeper and more comprehensive compared to the superior, who only received reports or summaries related to the case.

The superior's lack of direct investigative engagement was not the only concern regarding objectivity in the suspect detention decision. The objectivity of law enforcement, specifically at the investigation stage, largely depended on the investigator's understanding of the law. The superior who has the right to punish often lacked both adequate qualifications or provisions required of investigators and generally had a limited understanding of legal procedures. This gap in expertise raised concerns that detentions ordered by the superior who has the right to punish might disregard essential legal interests.

The element of subjectivity could arise from various aspects, such as personal influence, external pressure, and the inherent structure and culture of the military organization. In the organization, the unity of command and rigid hierarchy undermined the objectivity of law enforcement, potentially leading to interventions that compromise investigative dependence. This issue raised questions such as do Military Police Investigators acted solely on the evidence and facts found in the field, or were they influenced by the principle of unity of command or the influence of hierarchy? The independence of investigators was essential to ensure that each case was processed based on the facts and evidence available, not because of intervention or pressure.

Conclusion

In conclusion, the principle of unity of command showed that the superior who had the right to punish were vested with the authority to detain the suspect. However, concerns arose regarding the objectivity of this detention authority in the investigative process. The superior, not having directly participated in the investigation, typically had limited legal understanding and was influenced by the principle of unity of command and military hierarchy. These factors might undermine the objectivity required for impartial detention decisions.

Suggestion

To support objectivity in the investigative process, it might be beneficial to grant the authority of detention to Military Police Investigators while still paying attention to the principle of unity of command. This delegation could be structured to ensure that investigators had the authority to detain the suspect but were still required to report such actions to the superior who has the right to punish through established mechanisms, such as case titles or special reports. In this way, objectivity would be maintained while respecting the hierarchical structure of the military organization.

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